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SOME MINIMUM PUBLIC SHAREHOLDING
IN LISTED COMPANIES

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THE ARDUOUS ROUTE TO ENSURING SOME MINIMUM PUBLIC SHAREHOLDING IN LISTED COMPANIES

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[Abstract: The main objective of corporates in listing their shares on the stock exchanges is to mobilise resources for investment directly from the investors. And for investors the liquidity provided by the stock market and the monitoring and disciplining mechanism that goes with listing are the main attractions. If most of the risk capital is held by the promoters not only the relevance of listing for resource mobilisation is reduced but it would also have adverse implications for the disciplinary function of the stock market and relevant provisions of company law. Due to various reasons, company promoters in India generally happen to hold/control a large proportion of the shareholding of listed companies. Official attempts to ensure a minimum public shareholding of 25 per cent have been long drawn. The latest attempt in this direction, announced on June 4, 2010, got stalled even before it could be acted upon. The present paper is an attempt to quantify the issue. In the process it throws up evidence to show that the problem is more severe than what is generally perceived and argues that a lot more needs to be done if the objectives of listing are to be met.]

1. Introduction

The decision of the government announced on June 4, 2010 to ensure a minimum public shareholding of 25 per cent in stock exchange listed companies by amending the Securities Contracts (Regulation) Rules came nine years after the Securities and Exchange Board of India (SEBI) initiated steps to have some minimum public shareholding in listed companies, more than two years after the Ministry of Finance floated the discussion paper “Requirement of Public Holding for Listing”¹ (released on the last day of January 2008 asking for public responses by the end of February 2008) and almost one year after putting up the same again for discussion in July 2009 following the Finance Minister’s announcement in the Union Budget. In response to the discussion paper (DP), fears were then expressed that the move would flood the market with new share issues and the

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¹ <http://finmin.nic.in/reports/Discussion%20Paper%20Public%20Holdings.htm>

affected companies should be given five years time to implement the norm.² It was also said that the issue was being forced on companies that might not need the money, and so on. Once again, similar fears are being voiced widely now. The government has been accused of hastily amending the rules without adequate discussion and preparation.³ It is demanded that implementation of the amended rules should be deferred for three months and the accompanying press release could be treated as a discussion paper so that views of different stakeholders can be sought and grey areas addressed.⁴ The government seems to have responded positively and indications are that PSUs may be treated separately.⁵

The present situation is government's own making over the past two decades. Liberal listing norms and measures like buybacks, creeping acquisition, warrants as also preferential issues enabled promoters to gain/retain control even while enjoying the advantages of listing. The Government's disinvestment programme exacerbated the problem and is at the crux of it now. With corporate governance in the country being what it is, notwithstanding the improved disclosures and insistence on a minimum proportion of independent directors and board sub-committees, in most companies promoters control majority equity and individual shareholders have been pushed to the margin. The latest move by the government, though welcome, can only be termed as a first step in the direction of broad-based corporate ownership in the country.

The long gap between the release of the discussion paper and amendment of the rules and the government's readiness to have a relook at the rules inside of a week, reflect rather poorly on the policy-making process in the country. The decision indicates lack of coordination within the government and transparency in its actions. Interestingly, the SEBI Chairman is credited with the statement that: "It's (the amendment) still under discussion".⁶ On his part, even while a debate is raging on the market's ability to meet the sudden additional demand for funds, the Minister of State for Heavy Industry and Public Enterprises claimed that "In the next five years, we will list 35 PSUs... the

² "Give 5 yrs to listed companies to hike public stake", *The Financial Express*, March 10, 2008.

³ "Public shareholding in listed companies increased to 25%: Capital Market lawyers to be busy". See: <http://barandbench.com/index.php?page=brief&id=772>

⁴ The idea is attributed to the CII President. See: "25% public holding norm to aid disinvestment". See: <http://beta.thehindu.com/business/Industry/article449084.ece>. Treatment of private equity was specifically mentioned as a grey area.

⁵ "Government may modify new public holding rule". See: <http://www.business-standard.com/india/news/government-may-modify-new-public-holding-rule/397720/>

⁶ <http://www.business-standard.com/india/news/sebi-discuss-proposal25-compulsory-public-shareholding/67366/on>

government will get almost Rs. 1.5 lakh crores as *revenue* from this listing”.⁷ On the other hand, the government did not disclose at any point of time the synthesis of the responses to the DP nor the basis for its present decision except for repeating some of the general objectives like providing liquidity, discovering fair prices and lessening the scope for price manipulation which were mentioned in the paper itself.

The government has kept conspicuous silence on the most important question raised in the DP, namely the definition of public—whether it should mean only Indian individual shareholders or all non-promoter shareholders including FIIs, employees and their welfare trusts, mutual funds, other corporate bodies, etc. The amended rules exclude only the shares held with custodians from the ambit of public shareholders. Also missing in the final press release is the DP’s assertion that “larger the public float, the more effective is the instrument of listing as a tool for redistribution of wealth in the country”. The DP’s other poser regarding discriminatory treatment extended to PSUs has been indirectly answered as the rules do not make any specific mention of PSUs. Companies which do not meet the minimum public shareholding norm will be required to increase the public shareholding by at least five per cent per annum till the required norm has been met. Even while making 25 per cent minimum public holding as the norm, the new rules provide intermediate exemption to issues of companies whose post-issue capital at the offer price would be more than Rs. 4,000 crores with the proviso that they should increase the public shareholding in annual increments of at least five per cent, to finally comply with the 25 per cent minimum public shareholding norm.

2. A Dimension of the Problem

Immediate responses to the move indicate that an estimated Rs. 1.5 - Rs. 2 lakh crores worth of shares will have to be issued by the affected companies, depending upon whether the promoters offload their excess shareholdings or new shares are issued to meet the norm.⁸ A quick exercise by us revealed that there are 227 companies with more than 75 per cent promoter shareholding (not taking into account the shares held by custodians): 39 government companies; 29 foreign companies; and 159 other Indian companies (see *Table-1*).⁹ Assuming that in all these companies, promoters would offload their shares, the value of such shares would be nearly Rs. 1.48 lakh crores which is substantial in terms of new capital that needs to be raised but quite small compared to the total market capitalisation of Rs. 60 lakh crores. However, out of this as much as Rs.

⁷ <http://timesofindia.indiatimes.com/articleshow/6027631.cms?prtpage=1>

⁸ “Listed cos must have 25% public float: Government”. See: <http://economictimes.indiatimes.com/articleshow/6013295.cms?prtpage=1>

⁹ The classification is based on CMIE Prowess database.

1.25 lakh crores would be *on account of government companies only*. Out of the remaining Rs. 23,000 crores, about Rs. 4,000 crores would be by foreign companies and Rs. 19,000 crores would be by all other Indian companies. The total amount would be higher at Rs. 1.95 lakh crores with the PSUs accounting for Rs. 1.64 lakh crores if all the companies decide to issue new shares instead of the promoters deciding to offload their shares to meet the minimum public shareholding norm. In either case, the main burden of disinvestment will be on the government companies as they account for 84 per cent of the value of offloading/offering. It would be fairly reasonable to expect that the government would offload its shareholding instead of issuing new shares. This may be true with some private sector companies which may not require additional capital and thus the promoters would have to offload their shareholding. This means that the total offerings would be closer to Rs. 1.5 lakh crores than to Rs. 2 lakh crores.

Table-1
Estimated Value of Shares to be Offered/Issued to Meet the Minimum Shareholding Norm

<i>Company Category</i>	<i>Public Defined as all-Non-promoters#</i>				<i>Public Defined as Only Indian Non-Promoter Individual Shareholders</i>	
	<i>No. of cos.</i>	<i>Latest Market Value of the Shares@</i>		<i>No. of Cos.</i>	<i>Market Value of Promoters' excess holdings</i>	
		<i>If the promoters offload their excess holdings</i>	<i>If companies issue new shares</i>			
PSUs	39	1,24,613	1,63,973	85	3,84,323	
Foreign	29	4,247	5,663	128	84,073	
Other Indian	159	19,206	25,486	1,445	5,21,011	
All Companies	227	1,48,066	1,95,122	1,658	9,89,407	
Share of PSUs in the Total (%)	17.18	84.16	84.04	5.13	38.84	

Excluding the shares held by custodians.

@ Latest 30-day average market capitalisation, June 7, 2010 being the last trading date for data extraction. In case of some companies the figures are notional because of lack of trading in their shares for a long time.

Source: Based on Prowess database.

If public is defined as only Indian non-promoter individual investors and the other categories of shareholders cannot be forced to offload their shares and since the onus of listing is on the promoters, the promoters will have to offload shares worth Rs. 9.89 lakh crores. Out of this, Rs. 3.84 lakh crores will be by the public sector and Rs. 6.05 lakh crores by the private sector companies. The number of companies required to meet this norm would also be quite high at 1,658. These figures by all means are substantial and will definitely raise serious problems of implementation. Obviously, even if the

government saw merit in treating only Indian individual shareholders as public it would not have translated it into a decision.

At 227, the number of companies which need to restructure their shareholding pattern is quite small in relation to the overall number of listed companies. Though the non-government companies form a very high proportion of these, the issue seems to be quite manageable in their case as those affected significantly are much small in number. Out of the 159 Indian non-government companies as many as 93 are under the least preferred 'Trade-to-Trade' or 'Z' groups of the Bombay Stock Exchange thereby implying that the option before them is to delist rather than offering new shares to the public and raise more money or offloading of promoters' shares. Shares of 55 of these 93 companies were not traded even once during April 1 to June 7, 2010. Thus there is the possibility of a majority of the companies delisting rather than issuing new shares or promoters being able to dilute their holdings. The real issue in respect of Indian private sector companies is 11 'A' group and 45 'B' group companies which on an average have to raise Rs. 1,250 crores and Rs. 100 crores each respectively (see *Table-2*). Even among the A group companies the issue is with regard to the top five companies only which together require to raise almost Rs. 13,000 crores with Wipro alone accounting for Rs. 4,350 crores of this.

Since the release of the DP at the end of January 2008, some of the companies which were then having promoter shareholding larger than 75 per cent did dilute the promoters' equity to meet the impending norm. Out of the 249 companies which had more than 75 per cent promoter shareholding at the end of December 2007, 86 had got out of the ambit by the end of March 2010. Prominent among these are: TCS, Tech Mahindra, Emami, Sobha Developers, Parsvnath, Allcargo Global Logistics, Hindusthan National Glass & Inds., and Jindal Drilling & Inds. Thus while some companies have voluntarily prepared for the ensuing legislation, many, including PSUs, did not follow suit. Had they done so, the present problem would have been far less imposing. Out of the present lot of 227, only 38 companies had made some effort to bring down the promoter equity to varying degrees. There was no change in the promoter shareholding in as many as 104 cases. There indeed was an increase in the shareholding of 62 companies. 23 out of these 62 companies are new entrants since December 2007. Those who have entered into this category of more than 75 per cent promoter holding and which did not form part of this group earlier include companies like BOC, Singer, Thomas Cook, Micro Inks, HSBC Investdirect (India), India Foils, Ineos ABS (India), Fresenius Kabi Oncology, Foseco, Modi Rubber, Jaiprakash Power Ventures, Essar Shipping Ports & Logistics, Vintron Informatics, Orient Press and Novartis—most of them foreign. A good number of these may be considered as candidates for delisting. Indeed, the government's move may have come as a boon to those which failed to delist in their earlier attempts. If the public shareholders continue to resist, they could bargain with the government to liberalise

delisting norms. The present problem of dilution in case of heavy weight entrants like NHPC, Reliance Power, Oil India, DB Corp, JSW Energy, Godrej Properties and Mahindra Holidays could have been avoided had the government prevented low public float in case of new issues once it had initiated the move to have 25 minimum public shareholding or even hastened its decision instead of keeping it on the boil for such a long time.

The way the amended rules mandate the affected companies to increase public shareholding by at least five per cent per year, the burden of disinvestment would fall heavily in the first two years (see *Table-2*). In the context of new equity capital raised during the last three years: Rs. 79,352, Rs. 14,176 and Rs. 54,866 crores during 2007–08, 2008–09 and 2009–10 respectively, the amount to be mobilised during the first year, *i.e.*, 2010–11, even excluding the PSUs, is substantial. If, as the government seems to be willing, PSUs are exempted from immediate implementation of the norm, a three-year time limit with flexible dilution terms may serve the purpose as far as the private sector is concerned.

Table-2
Estimated Value of Yearly Share Offers by Different Categories of Promoters to Meet the New Norm

(Amount in Rs. Crores)

Year	PSUs	Non-Government Companies			All Companies
		Foreign	Other Indian Cos.	Total	
2010–11	43,936	2,445	13,739	16,184	60,120
2011–12	37,658	1,075	4,315	5,390	43,049
2012–13	22,644	688	1,020	1,708	24,352
2013–14	11,498	38	122	160	11,658
2014–15	8,877	Nil	10	10	8,887
Total	1,24,613	4,246	19,206	23,452	1,48,066

Source & Notes: See Table-1.

Total offloading by 153 non-government companies, whose offers will be less than Rs. 100 crores each, works out to Rs. 1,732 crores. As noted above, most of these would have to delist instead of being able to dilute the promoters' stake. This leaves 35 companies—28 of which fall in the Rs. 100–500 crore range, the corresponding total divestment by the private promoters being Rs. 7,300 crores and 7 companies with offers larger than Rs. 500 crores. Since the problem is acute in case of only a few companies, direct interaction with them by the authorities to devise company specific plans may be a better option than trying to impose a uniform implementation schedule and giving scope to a painting a daunting scenario and thereby further delaying the whole thing.

3. All that Public Shareholding may not be Really Public

A related issue which should be a matter of serious concern for the policy makers is the possibility of the shareholding owned or controlled by the promoters hidden among the non-promoter categories like other corporate bodies, individual shareholders and 'Any Other' category. Some promoters may resort to this practice further in order to technically comply with the new norm. It is a moot question if the authorities are going to delve deep into this practice which has implications for not just the minimum public shareholding norm, but also for price manipulation, insider trading, acquisitions, etc. It is not only the smaller groups in which the possibility of promoter holding remaining hidden as public shareholding is high,¹⁰ it appears that the problem extends to the larger ones as well. The 'public' shareholding of Jaya Hind Investments (4.01%), Maharashtra Scooters (2.34%) and Sikkim Jansewa Pratisthan (1.26 %) in Bajaj Auto; Jaya Hind Investments (5.47%), Maharashtra Scooters (3.19%) and Sikkim Jansewa Pratisthan (1.73%) shares in Bajaj Holdings & Investments; Jaya Hind Investments (4.02%), Maharashtra Scooters (2.34%) and Sikkim Jansewa Pratisthan (1.26%) in Baja Finserv may serve as cases in point. How much of the present reporting is influenced by family division is something one needs to look at closely. *In any case, Bajaj Holdings & Investments is a promoter shareholder of Maharashtra Scooters with 24 per cent shareholding.* Further, all the three investee companies—Bajaj Auto, Bajaj Holdings & Investments and Bajaj Finserv are shown to be part of the Bajaj Group by the Bajaj Auto website.

Similarly, one needs to look carefully at the Aasia Management & Consultancy (1.2%)—a promoter of Hinduja Ventures; Ashok Leyland (4.19%), Hinduja Ventures (1.48%) and Htmt Telecom (1.7%) shareholdings in Indusind Bank Ltd. Another interesting case is that of Reliance Industries Ltd whose non-promoter shareholders include Reliance Chemicals (1.90%) and Reliance Polyolefins (1.87%). Incidentally, while showing the share of promoter and promoter group as 44.76 per cent and 46.48 per cent whether shares with custodians are taken into account or not respectively, the company reports that "Voting Rights of Promoter & Promoter Group aggregate to 47.25 per cent of the Company's Capital on which voting rights can be exercised." The 1.06 per cent shareholding of Reliance Capital in Reliance Industrial Infrastructure is shown under the public category probably because the two Ambani brothers act as independent groups.

¹⁰ For instance, classification of some shareholders was changed so drastically between December 31, 2007 and March 31, 2008 in case of some Remi group companies that promoter shareholding increased from next to nothing to more than 60/70 per cent. For more illustrations, see: K.S. Chalapati Rao, "Some Aspects of Corporate Ownership in India: A Note in the Context of the MoF Discussion Paper "Requirement of Public Holding for Listing"", a paper presented in the Seminar *Industrial Development and Economic Policy Issues*, organised in honour of Professor S.K. Goyal, June 27–28, 2008 by the Institute for Studies in Industrial Development, New Delhi.

More recently, following a reference from RBI regarding suspected misrepresentation of promoter group's shareholding in Bank of Rajasthan (BoR) and with the leads provided by the RBI, SEBI discovered that:

The promoters of BoR have by way of their continuous disclosure publicly announced that their stake has been coming down from 44.18 per cent as at quarter ending June 2007 to 28.61 per cent as at quarter ending December 2009 which was clearly false. It was planned in such a way that on paper their holding seems to have reduced but in reality, the holding of the promoters (controlled by the Tayal group) along with their front entities, had actually increased from 44.71 per cent as at quarter-ending June 2007 to 60 per cent as at quarter ending March 2008 and stood at 55.01 per cent as at quarter-ending December 2009. No disclosures related to acquisition were made to the stock exchanges by any of the acquiring groups or by BoR at any time over this extended period In fact, the promoters of BoR and their connected entities have been trading in the shares of BoR without any disclosure to this effect to either the public or the stock exchanges.

...

Thus from the above it appears that the changes in shareholding effected by the promoters of BoR seem to be intended to disguise their real ownership and control.¹¹

SEBI passed an ad interim ex-parte order restraining 100 entities/persons connected with the group from accessing the securities market and further prohibited them from buying, selling or dealing in securities in any manner whatsoever. But for the reference from RBI, it does appear that this case would not have been taken up by SEBI.¹² Interestingly, SEBI did not seem to have enquired into the reporting of shareholding pattern of other listed companies of the group. We did find some of the promoter group entities mentioned in the order as 'public' shareholders in other companies of the group. If not for anything else, this case further highlights the need for closely examining the reported shareholding

¹¹ SEBI, Directions under Sections 11, 11(4) and 11b of the Securities and Exchange Board of India Act, 1992 in the matter of Bank of Rajasthan Limited available at: www.sebi.gov.in/cmorder/BankofRaj/BankofRajasthan.pdf

¹² Interestingly, reports indicate that it is the IB which came out with the finding that the banned Ketan Parekh and his associates are active in the Indian stock market and investing on the basis of insider information. See: "Parekh still active in stock markets: IB reports", *Financial Express*, June 23, 2010.

pattern by listed companies and identifying deliberate misreporting as also loopholes in the criteria.¹³

Then there is also the deployment of foundations, trusts and employee welfare funds, etc. Most of these even if they are not *owned* by the promoter group, are likely to be under direct influence/control of promoters/managements and thus are bound to support the promoters on alloccasions. The benefits from such investments would flow to a select few and not the public at large nor are their shares likely to be traded in the normal course. Even the DP noted that such investments would not form part of the floating stock. There, however, seems to be considerable vagueness surrounding the classification of such entities. For instance, Wipro reclassified the 0.44 per cent shareholding of Azim Premji Foundation (I) Pvt Ltd of which Mr. Premji is a Promoter Director, from non-promoter to promoter category after June 2009. The company's earlier stance was that "Mr Premji disclaims any beneficial interest in theses shares. As such these shares are not reflected under "Promoter Category". Wipro also reports that "Out of 8,942,371 shares held by other Trusts, 968,803 equity shares are held by Wipro Equity Reward Trust." Wipro thus treats such a trust as not belonging to the promoter group. Some other companies which do not treat them as part of promoter group are: Biocon, Dalmia Cement (Bharat), Garware-Wall Ropes, Patel Engineering, Mahindra Holidays & Resorts and Zenith Infotech. On the other hand, Bajaj Auto, Elgi Equipments, Mahindra & Mahindra and Television 18 include them in the promoter category.

That there is a need for examining the issue thoroughly is evident from the filings of some listed PSUs as well. While the reported non-promoter shareholding in Bharat Petroleum Corp is 45.07 per cent, it includes 9.33 per cent by BPCL Trust for Investment in Shares and 7.44 per cent by the LIC. Similarly, LIC and United India Insurance co. together hold 16.39 per cent of the 48.89 per cent of the public shareholding of Hindustan Petroleum Corp. Balmer Lawrie Investments Ltd (BLI) reports the shareholding of President of India as 59.67 per cent. BLI in turn has 61.80 per cent shareholding in Balmer Lawrie & Co Ltd. This is, however, shown as Public Shareholding while the promoter group holding is Nil! It is a different matter that LIC, NIC, GIC, etc., together hold another 12.75 per cent making a total of 74.54 per cent. Incidentally, Balmer Lawrie reports under the RTI Act that it "is a public limited company with 61.8 per cent

¹³ The need for reviewing the various definitions and their reporting is suggested by the case of Bajaj Hindusthan Ltd. The company in its annual report for the year 2008–09 reports 24 persons/entities which are part of the "group" as defined under the MRTTP Act for purposes of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997. But none of the subsidiaries and associates listed among the related parties (under AS18) figure in the "group". Interestingly, the group entities include the company's Employee Welfare Funds and Medical Aid Funds.

shareholding by Balmer Lawrie Investments Limited, a Government Of India company and hence a government company within the meaning of section 617 of the Companies Act, 1956." While the President of India has 90.63 per cent share in Hindustan Photo Films Mfg Co, public sector insurance companies hold 9.37 per cent share in the equity capital of the company with no other shareholder thus making a mockery of listing. Incidentally, the company's shares were last traded on March 4, 1994. Another company whose listing is a misnomer is Ircon International with President of India holding 99.73 per cent shares. Shares of Ircon were last traded on October 17, 1995.

While the government of Delhi is a non-promoter shareholder of Indraprastha Gas Ltd with five per cent shareholding, one can see considerable ambiguity in case of some Gujarat State government companies. 99.33 per cent of MMTC's shares with the President of India and 0.63 per cent with Mutual Funds/UTI and another 0.01 per cent and 0.03 per cent with other corporate bodies and individuals respectively, a question arises whether it would not be more prudent to delist MMTC rather than bringing down government's shareholding to 75 per cent, even in a phased manner. Incidentally, the offloading required in this case is Rs. 36,000 crores, the highest among all the 227 companies! Similar is the case with Hindustan Copper Ltd in whose case the required disinvestment works out to Rs. 10,000 crores. In case of NMDC while the President of India holds 90 per cent, another 4.97 per cent is held by LIC. NMDC is the second largest in terms of required offloading – Rs. 16,500 crores. In case of Oil India, the shareholding distribution suggests a promoter shareholding of 78.43 per cent held by the President of India while Bharat Petroleum Corp (2.23%), Hindustan Petroleum Corp (2.23%) and Indian Oil Corp (4.45%), all government companies, together holding 8.91 per cent share, appear as public shareholders. Thus, the shareholding of government and government companies would work out to 87.34 per cent instead of the reported 78.43 per cent. On paper, ONGC conforms to the minimum public shareholding norm as the President of India holds directly 74.14 per cent. However, the non-promoter shareholders include: Indian Oil Corp (7.69%) and Gail India (2.40%) and the LIC (3.27%).

Thus in PSUs, there is considerable gap between what is reported as public shareholding and what would be if the shareholding of other PSUs is treated as promoter equity (*Table-3*). If these holdings have also to be divested to make the ownership of these PSUs really broad-based, the corresponding public offers would be far higher than the present figures indicate. On the other hand, if the fictitious listing cases are set aside, the actual amount of divestment would come down to realistic levels and the private sector would have much less ground to complain about the market getting flooded with new issues.

Table-3
The 'Real' Extent of Public Shareholding in Select Listed PSUs

Listed PSU	Estimated Offloading to meet the New Norm (Rs. Cr.)@	Reported Promoters' Share in the Equity (%)	Public Shareholding (%)		
			Reported	Held by Other PSUs* (Cos., Banks & Insurance Cos.)	Remaining
MMTC	36,038	99.33	0.67		0.67
NMDC	16,568	90.00	10.00	4.97	5.03
NTPC	15,750	84.50	15.50	3.51	11.99
Neyveli Lignite	4,540	93.56	6.47	3.27	3.20
Indian Oil Corp	3,120	78.92	21.08	14.11	6.97
Oil India	1,008	78.43	21.57	8.91	12.66
Andrew Yule	197	94.42	5.58	3.08	2.50
Hindustan Photo Films	68#	90.63	9.37	9.37	0.00
Ircon International	26#	99.73	0.27		0.27
ONGC	Nil	74.14	25.86	13.36	12.50

Notional, based on the last traded price, since no recent history of trading.

@ Based on the reported public shareholding.

* Identified from among those owning more than one per cent of the equity.

The fact that certain shareholders, who though they may not strictly belong to the promoter category, are unlikely to trade their shares in the normal course, is indeed taken note of when calculating the free float methodology based share price indices.¹⁴ For instance, the weights assigned to the market capitalisation of RIL in NSE's S&P CNX Nifty is 0.514626 whereas the reported non-promoter share in equity for the latest quarter (June 2010) is 55.24 per cent. It is obvious that the shareholding of Reliance Chemicals Ltd and Reliance Polyolefins Ltd (reported public shareholders with combined shareholding of 3.77 per cent) is not treated as free float shareholding. Similarly, in case of ONGC, the free float factor is 0.157677 while the reported public shareholding is 25.86 (including the 10.09 per cent shares held by IOC and GAIL). Another interesting case is that of Cairn India. If the shareholding of Petronas International Ltd, a strategic investor, is not taken as a free float, the public shareholding in the company comes down drastically from 37.64 per cent to 22.68 per cent. Going by this criteria, both ONGC and Cairn India have to divest promoter holding. Otherwise they need not. It is obvious that the free float definition serves the

¹⁴ See *S&P CNX Index Methodology* at http://www.nseindia.com/content/indices/nifty_freefloat_method.pdf which states that "Companies eligible for inclusion in the S&P CNX Nifty should have at least 10% of its stock available to investors. For this purpose, float is stocks which are not held by the promoters and associated entities (where identifiable) of such companies."

government's objectives of improving liquidity, reducing the scope for share price manipulation and enabling the public to share the wealth generated by private enterprise much better than that which simply treats all non-promoter shareholding as public.

Thus there exists a large scope and real need for ascertaining the true nature and extent of promoter group's ownership and control. Far more coordinated data efforts are needed, if the government wishes to broad base the ownership, deepen the market, avoid price manipulation, minimise abuse of insider trading, etc especially in the context of complex inter-corporate investment structures being used to camouflage real ownership and control. This has got complicated further due to the spread of Indian business groups abroad and use of tax havens by quite a few of them.

4. Market Microstructure, May Be? But What about Market for Corporate Control?

Even if the amended rules are implemented in the present form, the number of companies not being large considering the total number of listed companies, the resulting higher float can make little dent in curbing share price manipulation. The DP had itself acknowledged that "no amount of floating stock can be an effective insurance against price manipulation. Effective surveillance and enforcement mechanism and legal framework are necessary to fight the menace of price manipulation". By focusing on liquidity and price manipulation, etc., for which other mechanisms are there, the government has ignored the important issues of better monitoring of company managements and redistribution of wealth. One implication of the present measure is that the government has no intention (not merely because it is difficult to implement) of further lowering the promoters' share from 75 per cent. Compared to the minimum promoter-contribution of 20 per cent under SEBI Guidelines and what was implied in the public offer of 60 per cent which prevailed till the early 'nineties, the 75 per cent limit for promoters is substantially high. Even an elementary understanding of Indian company law would be enough to recognise that with 75 per cent shareholding in a listed company in which one can never expect *all* the remaining shareholders to ever come together, promoters would have *full* control over the company's affairs. Indeed, even a somewhat lower share is enough to exercise such control. High promoter holdings while providing them safety and continuity and protecting them from takeover threat, also effectively nullify many provisions which are meant to discipline the managements and look after outside shareholder interests.

It is relevant in this context to refer to the DP which stated that:

... any requirement of too high a level of public float discourages closely held well-run profit making companies from going public. While the promoters want the benefits of listing, they are generally averse to giving a large share in the capital/control to the public. A very high level of public float also acts as disincentive to private enterprises. It is, therefore, desirable that the promoters are not only allowed to have a reasonable minimum stake, The policy challenge is to balance the interests of the promoters and of the public.

A 75 per cent stake by promoters can in no way be termed as reasonable. One would not be far wrong in surmising that in its zeal to have larger number of companies to be listed, the government ignored the negative implications of such high promoter holding. Indeed, one would like to ask if the promoters can mobilise as much as 75 per cent risk capital, why they should tap the stock market for the remaining 25 per cent instead of raising debt. Probably thanks in part to the low floats, the premium of Rs. 1,38,968 crores constituted almost 87 per cent of the capital raised by Non-government Public Limited Companies during 2004–05 and 2009–10 through equity issues. It may not be a mere coincidence that the minimum public offer of 10 per cent was extended to all large issues by removing sectoral restrictions in May 2006.

Also, not all companies which took advantage of the low public offers are closely held family companies. Some of them happen to be offshoots of other listed companies. For instance, in Godrej Properties, which has 83.79 per cent promoter holding, 69.43 per cent equity is held by Godrej Industries, another listed company. The listed Reliance Infrastructure holds 44.96 per cent of the total promoter equity of 84.78 per cent in Reliance Power. The controversy surrounding the IPO of Reliance Power and SEBI's indictment are well-known.¹⁵ Mahindra Holidays & Resorts is still owned to the extent of 83.09 per cent by Mahindra & Mahindra through its 100 per cent subsidiary Mahindra Holdings & Finance Ltd. Such issues enable promoters to take undue advantage of high premium that goes with low public offers and create a mismatch between risk and reward. Indeed, a good number of these companies belong to business groups which have long association with the stock market. Should such companies be treated on par with other companies which are fully owned by the promoters before coming to the public for funds to meet the expansion needs?

On the other hand, one is not sure whether the IPO proceeds have directly benefited TCS. Rather, the benefit went to Tata Sons Ltd., its holding company.¹⁶ One needs to discuss

¹⁵ For a description of this case and that of Reliance Petroleum and Future Capital Holdings, one may refer to: K.S. Chalapati Rao, *op. cit.*

¹⁶ For a description of this case, see: K.S. Chalapati Rao and K.V.K. Ranganathan, "The Indian *contd...*

the additional benefits from listing of such companies. Will it bring larger sections of the economy under market discipline and help promote professionalisation of managements beyond that forced by competitive forces? Should such companies be enticed to list on the stock exchanges with the assurance of control through low public holdings?

In the context of the other objective of redistribution of wealth expressed in the DP, it needs to be underlined that, in the aggregate, promoters (government and private) own 56.18 per cent of the total market capitalisation. Individual investors account for less than 9 per cent of the total and those with nominal value of shares up to Rs. 1 lakh account for less than 4 per cent of the total. Given the fact that the capital issues on account of the new norm would not form a significant portion of existing market capitalisation, this situation is not going to change drastically even when the 25 per cent norm has been finally achieved. The view expressed in the DP that

The minimum public float provides an opportunity to the general public to have a share in the increased wealth generated by the competitive private enterprise and prevents cornering of the benefits flowing from the policies of the Government and public institutions by a handful of promoters.

will remain wishful thinking.

5. PSUs Need to be Treated as a Separate Category

The government has obfuscated PSUs' need for resources with its own need for covering up budget deficits. Notwithstanding the sentiments expressed by the government that

Our fellow citizens have every right to own part of the shares of public sector companies while the government retains majority shareholding and control. My Government will develop a roadmap for listing and people-ownership of public sector undertakings while ensuring that government equity does not fall below 51 per cent. (*President's Address to Parliament on June 4, 2009*)

The Public Sector Undertakings are the wealth of the nation, and part of this wealth should rest in the hands of the people. While retaining at least 51 per cent Government equity in our enterprises, I propose to encourage people's participation in our disinvestment programme. (*Union Budget Speech 2009–10*)

Stock Market in 2005–06: An Examination of Two Major Events", ISID Working Paper No. 2006/10. (<http://isid.org.in/pdf/wp0610.PDF>)

the fact is that Indian individual shareholders do not own a significant portion of the free float market capitalisation of PSUs. Even in SAIL a mere 1.7 per cent shares are held by individuals which constitutes 12 per cent of the non-promoter equity. On the other hand, if captive investors like insurance companies and other PSUs are made to park their funds (which means indirectly pass on the money to the government) with listed PSUs, one does not know what benefit the investing and investee companies would derive from such investments. With such in-house shareholders, can listed PSUs be more accountable and be subject to market discipline, even if that is one of the stated objectives of listing? The government has to set its own house in order instead of creating confusion by occasional pronouncements and half-hearted actions.

It is obvious that public ownership of PSUs would be the maximum when they are fully owned by the government. This is because not all Indians can take part in the disinvestment programme unless the government issues vouchers to each and every citizen. Otherwise, it is only those who have investible surplus and who are willing to take risk. On the contrary, foreign portfolio investors could be far more important than the domestic investors. In this background, the government's above assertions do not carry much conviction.

The nature and issues in respect of governance and wealth redistribution are quite different in case of PSUs. Implementation of the minimum public shareholding norm is getting needlessly delayed because the government is trying to treat the two on par. If the government feels that it has to discipline itself, there is no need to amend the rules. It can do so voluntarily by a diktat to the administrative ministries. As of now, the government can simply exempt itself and let the private sector fall in line. Before making further attempts at disinvesting, it should first start disentangling the PSU ownership structure and even delist some extremely placed ones. Mere listing will not enhance PSU managements' accountability nor will it ensure the success of PSUs. It has to be backed up by the governments' own commitment to ensure their proper functioning. If the government feels that it lacks such a commitment then one has to question the very basis for continuing them as PSUs with the government holding 51 per cent equity.

6. To Conclude

The minimum 25 per cent public shareholding requirement, whether implemented immediately or delayed for some time as demanded by the private sector, only meets the government's objectives as stated in its Discussion Paper of January 2008 to a minor extent, especially with public being defined to include practically all non-promoter shareholdings. On many a count the maximum limit of 75 per cent promoter holding cannot be justified except as a means of ensuring Indian promoters' control over their

enterprises and their personal prosperity. Even in the face of high level of promoter holding it is apparent that the promoters have not been averse to further enriching themselves by overt and covert means at the cost of the other shareholders.¹⁷ If redistribution of wealth and prevention of concentration of economic power in a few hands is an important public policy objective, the long term view should be to rollback the maximum level of promoter shareholding to a more reasonable level. With substantially lower level of promoter holding, the question of whether public should include only individual investors or not would also become far less relevant. In the given circumstances, however, the high promoter shares cannot be rolled back *meaningfully* without destabilising the market.

If the objective is to somehow make companies fall in line with the 25 per cent minimum public shareholding norm, in the 'business as usual' fashion, the government can simply treat the public sector companies as a different type of entities and settle with individual private sector companies to draw up plans to meet the new norm. The problem becomes a little complex if the government wants even the low 25 per cent public shareholding to be really public. First and foremost, the disinvestment figures indicated by us as also other analysts will no longer be valid, especially because reporting of public shareholding even by PSUs leaves a lot to be desired. One is not sure of the extent of concealed promoter equity because evidence indicates that considerable shareholding could be in the hands of entities closely associated with promoters—some directly owned, others controlled and some others closely related through family ties which are not covered by the definition of relatives. Addressing these issues is necessary not only to implement the present shareholding norm appropriately, but also to minimise malpractices in share trading. It is not going to be easy with so many promoters setting up companies abroad both for genuine business purposes as also for tax planning and obfuscation of ownership and control.

While the cleansing may take a long time, there is nothing which can prevent the government from insisting on a reasonably lower promoter shareholding for new issues. That means the breathing time given to new large issues should be withdrawn. With low

¹⁷ For evidence to show how promoters reward themselves excessively compared to non-promoter executive directors on company's boards, see: K.S. Chalapati Rao, "Some Aspects of Corporate Ownership in India: Promoters versus Public", in S.R. Hashim, et. al., *Indian Industrial Development and Globalisation*, Essays in Honour of Professor S.K. Goyal, Academic Foundation, 2008. How serious is the menace of insider trading can be gauged from Asian Corporate Governance Association, "ACGA White Paper on Corporate Governance in India", January 19, 2010, wherein ACGA says "While India has laws and regulations governing related-party transactions, they provide weak safeguards for minority investors. Indeed, India's rules in this area are considerably less developed than many other Asian markets."

public offers, the pricing is distorted *ab initio* and becomes a benchmark for subsequent offers. Further, there is nothing which can prevent some large business groups floating new companies, raise huge premium and later on merging the same back into the parent company. It is possible that the government might have left the window open for itself. But it does not need to follow this stealthy approach. It needs to be examined if listing by companies which do not need the money directly for their own growth needs – which actually enriches the promoters and justifies the label of the stock market being a casino – and those which use inter-corporate investments by the already listed ones should be encouraged.

No doubt there should be discussion on the issue of minimum public shareholding: not on the basis of the June 4 Press Release but on the basis of the Discussion Paper of January 2008. The delay may be worth it, if it can result in stating the objectives in listing, clarifying not only the grey areas but also the black ones, identifying the loopholes and finding ways and means to effectively plug them. Nothing more is going to be lost if the implementation of the norm for the existing companies is delayed further.

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